

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/CS/SB 2000

INTRODUCER: Environmental Preservation and Conservation Committee and Commerce Committee and Senator Ring

SUBJECT: Seaports

DATE: March 24, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Pugh</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Kiger</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>CA</u>	_____
4.	_____	_____	<u>TA</u>	_____
5.	_____	_____	<u>WPSC</u>	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Florida has 14 public seaports that are considered significant economic drivers for the regions in which they are located, and for the state in general. The individual seaports receive a combination of public funding and private revenues to finance their operations and capital improvements.

As work to widen and modernize the Panama Canal begins, ports on the entire U.S. coastline are considering their options on how to best position themselves to participate in what is expected to be an economic boon in maritime transit of oil, foodstuffs, consumer goods, and other cargo. States such as California, Maryland, South Carolina, and Texas are exploring options to finance major port improvements to attract the increased international shipping activities and to handle the larger tankers and cargo ships that will be traversing the Panama Canal.

CS/CS/SB 2000 includes several proposals related to seaports:

- Creates a port conceptual permit system which would allow for the issuance of an umbrella permit that ties together a series of individual environmental permits and authorizations normally needed for port operations.

- Clarifies the applicability of state stormwater rules to structures related to port activities provided certain conditions are met.
- Revises the work program amendment process for seaport projects funded under the Department of Transportation's 5-year work program.
- As clarification, deletes references to memoranda of agreement between the Department of Environmental Protection and the Florida Ports Council for a supplemental permitting process for seaports. Instead, the department is empowered to directly provide a supplemental permitting process.
- Adds wetlands communities as an issue needing consideration when establishing mixing zones related to dredging and return water discharges.

This bill amends ss. 161.055, 253.002, 311.09, 373.403, 403.061, and 403.813, F.S. and creates s. 373.4133, F.S.

II. Present Situation:

Background on Florida's seaports

Florida has 14 public seaports:¹ Port of Fernandina, Port of Fort Pierce, Jacksonville (JaxPort), Port of Key West, Port of Miami, Port of Palm Beach, Port Panama City, Port of Pensacola, Port Canaveral, Port Everglades, Port Manatee, Port St. Joe, Port of St. Petersburg, and Port of Tampa.

These seaports are considered significant economic drivers. A recent economic analysis² prepared for the Florida Ports Council indicated that:

- In 2008, the maritime cargo activities at Florida seaports were responsible for generating more than 550,000 direct and indirect jobs and \$66 billion in total economic value.
- In 2008, the maritime cargo activities at Florida seaports contributed \$1.7 billion in state and local tax revenues.
- The average annual wage of seaport-related jobs is \$54,400, more than double the average annual state wage for all other non-advanced degree workers (\$26,933) and over \$15,000 more than the average annual state wage for all occupations (\$38,470).
- The return on investment for seaport projects is an estimated \$6.90 to \$1.

Florida's public seaports handled more than 121 million tons of cargo in FY 2006-2007, the most recent information available.³ Of that, 19 million tons were exports, 50.3 million tons were imports, and 51.9 million tons were domestic shipments.⁴ Florida's top five international trading partners, in terms of cargo value, are: Brazil, Japan, Germany, Venezuela, and China.⁵ The cruise business also is a significant segment of Florida's seaport activity; in 2007, more than 14 million

¹ Listed in s. 403.021(9)(b), F.S. Interactive locator map is available at: <http://www.flaports.org/index.htm>. Last visited March 1, 2010.

² Available at [http://www.flaports.org/docs/2010%20economic%20action%20plan%20for%20florida%20-%20january%202010\(2\).pdf](http://www.flaports.org/docs/2010%20economic%20action%20plan%20for%20florida%20-%20january%202010(2).pdf). Last visited March 1, 2010.

³ Available at <http://www.dot.state.fl.us/planning/trends/tc-report/Seaport032509.pdf>. Last visited March 1, 2010.

⁴ Ibid, page 2.

⁵ Florida Ports Council Statistics Report, available at <http://www.flaports.org/statistics.htm>. Page 6. Last visited March 1, 2010.

passengers embarked and disembarked from the nine ports with cruise operations, and an estimated 17.7 million passengers are predicted for FY 2010-2011.⁶

Florida seaports are eligible, per s. 311.07, F.S., for a minimum of \$8 million a year⁷ in grants from the State Transportation Trust Fund for projects to improve the “movement and intermodal transportation” of cargo and passengers. The projects are recommended annually by the Florida Seaport Transportation and Economic Development (FSTED) Council⁸ and approved by the Florida Department of Transportation (DOT). Most years, the Legislature appropriates more than \$8 million to the seaports; for FY 2009-2010, for example, DOT was directed to spend \$21.9 million on seaport grants.

The ports also benefit from an additional \$25 million in debt service paid with motor vehicle license fees from the State Transportation Trust Fund for 1996 and 1999 bond issues, per ch. 315, F.S., which financed major port projects.

Pursuant to s. 311.07, F.S., the state grant funds cannot exceed 50 percent of the total cost of an FSTED project. In order to be approved, a project must be consistent with the seaport’s comprehensive master plan and the applicable local government’s comprehensive plan, and comply with water-quality standards and requirements specified in ch. 403, F.S.

Eligible projects per the statute include:

- Dredging or otherwise deepening channels, harbors, and turning basins;
- Construction or rehabilitation of wharves, docks, piers, and related structures;
- Transportation facilities, such as roads or rail lines, located within a port; and
- Acquisition of land for port purposes.

Projects on the current FSTED 5-year work program include berth and terminal construction at Port Canaveral; purchases of cranes for Port Everglades; construction of cold storage warehouses at Port Manatee; and dredging at Port of Miami.

The FSTED port projects also are part of DOT’s 5-Year Work Program, which is submitted to the Legislature for approval. If DOT and FSTED decide to shift funding among approved seaport projects within a given fiscal year, it must seek approval from the Legislative Budget Commission, pursuant to s. 216.181, F.S., with a budget amendment.

Port planning and regulatory requirements

Section 163.3178, F.S., requires each applicable county and municipal comprehensive plan to include a chapter (or “element”) on coastal zone management, and if applicable, the comprehensive master plan for the public seaport located within its geographic jurisdiction. These seaport master plans generally comprise a 25-year planning horizon for expansion, dredging, and other improvements at the particular ports.⁹

⁶ Supra FN 3, page 5.

⁷ Since FY 2005-2006, FDOT by agreement with FSTED has earmarked at least \$15 million for FSTED projects.

⁸ Created in s. 311.09, F.S., the FSTED Council is comprised of the port directors, or their designees, of the 14 public seaports; the FDOT Secretary or designee; the director of the Governor’s Office of Tourism, Trade, and Economic Development, or designee; and the Secretary of the Florida Department of Community Affairs or designee.

⁹ The individual seaport master plans are available online at the ports’ websites.

Dredging and other port projects that have the potential to impact water quality, sovereign submerged lands, sea grass and wildlife habitats, and upland disposal sites typically require permits from the U.S Army Corps of Engineers (corps), or the Florida Department of Environmental Protection (DEP) and the water management districts under regulations in chs. 161, 253, 373, and 403, F.S.

These agencies and the seaports try to work together early in the project planning process to identify environmental impacts and possible mitigation solutions. To that end, s. 311.105, F.S., created the Florida Seaport Environmental Management Committee to serve as a forum for seaport-related environmental permitting issues. The committee is comprised of five seaport directors as voting members and representatives of DEP, the state Department of Community Affairs, the corps, and the Florida Inland Navigation District as non-voting, ex officio members.

Section 311.105, F.S., also specifies the documentation required for applications submitted by seaports for joint coastal permits, which have a duration of 5 years, and for 15-year conceptual joint coastal permits. These permits are designed to address in a comprehensive manner the variety of environmental impacts large-scale port projects might create.¹⁰

Panama Canal Project¹¹

Built by the United States and opened in 1914, the Panama Canal is a 48-mile-long ship canal in the narrow Central American isthmus that joins the Atlantic and Pacific oceans. On December 31, 1999, ownership and control of the canal transferred from the United States to Panama. Today, the Panama Canal Authority (ACP) manages the canal.

The ACP has undertaken a \$5.2 billion modernization and expansion of the canal, which includes a third lock to move the new larger ships through the isthmus. Private investors and bank loans will finance some of the cost, and ACP is hoping that increased toll revenues from increased usage will generate enough money to pay for the rest of the project, which is expected to be completed by 2014.

For decades the Panama Canal has been a significant shipping lane for international maritime trade. Annual traffic has risen from about 1,000 ships in the canal's early days to 14,702 vessels in 2008. While the canal was built to handle the largest ships of its era, modern tankers and container vessels are bigger. As a result, these larger ships either take a different route or their owners don't use them in the Western Hemisphere, or, more commonly, goods are dropped off at seaports on the U.S. west and east coasts – depending on the final destination of the goods – and then hauled by truck or rail across the continent, where they may be loaded onto outbound ships. Some cargo stays in the United States, and some is further transported on land to points north or south.

Supporters of the Panama Canal expansion contend the improved shipping will significantly reduce shipping costs, and even transit time.

¹⁰ See s. 403.061(37) and (38), F.S.

¹¹ Numerous sources are available for information about the Panama Canal expansion project, but a basic primer is found here: http://en.wikipedia.org/wiki/Panama_Canal_expansion_project.

The economic implications of the expansion have led several states, such as California, Maryland, South Carolina, and Texas, to reevaluate their long-term port planning and financing strategies, in order to take advantage of the anticipated greater volume of cargo. Also under re-evaluation nationwide are intermodal transportation plans, related to financing and location of rail and highway infrastructure improvements.

III. Effect of Proposed Changes:

Section 1 amends s. 161.055, F.S., to provide that activities contained within a port conceptual permit may be undertaken under a joint coastal permit.

Section 2 amends s. 253.002, F.S., to provide that any delegation concerning the use of state owned lands by a port shall be subject to the conditions created in accordance with the development of the port conceptual plan created in s. 373.4133, F.S.

Section 3 amends s. 311.109, F.S., to direct the FSTED Council to submit to the DOT a list of port projects which are to be funded during the next fiscal year. DOT is directed to submit the list as part of its annual legislative budget request. The DOT is also required to include the total amount of funding that is to be allocated to port projects during the successive four fiscal years.

Further the FSTED Council can request that the DOT submit work plan amendments for port projects to the Governor 10 days after submitting the request or at the time of closure of the funding agreement between the DOT and the port.

Section 4 amends s. 373.403, F.S., to amend the definition of “stormwater management system” to exclude overwater piers, docks, and similar structures used by ports if the port has a stormwater pollution prevention plan developed pursuant to the National Pollution Discharge Elimination System.

Section 5 creates s. 373.4133, F.S., to provide for the issuance of port conceptual permits. Specific provisions provide:

- Legislative findings that port facilities are critical infrastructures and significantly support economic development and because of this it is important to provide a permit review process to help ports remain internationally competitive.
- That any of the 14 listed ports may apply to the DEP for a port conceptual permit. The conceptual permit may include authorizations required for the use of sovereignty submerged lands and the requirements for receiving an environmental resource permit. The ability to apply for a conceptual permit is also extended to private entities that may have a controlling interest in property, located in the immediate vicinity of a listed port, used for private industrial marine activities. The conceptual permits may be issued for a period of up to 20 years and provide for one additional extension of 10 years. The conceptual permit shall also certify compliance with state’s federally approved coastal zone management programs.
- Requirements for information to be contained in the permit application. These include: data that supports conceptual engineering and environmental designs that will meet

- applicable rule criteria; projections of cost, revenue and job creation; maps detailing where construction will or will not occur; anticipated impacts to wetlands and proposed mitigation; amount of impervious surface and design of stormwater treatment systems for those areas; and the general location of activities on sovereignty submerged lands. The DEP is authorized to specify any additional information they need to compete the permit.
- Directions to the DEP to effect a reasonable balance between the potential benefits of the facility and the impacts upon the state's natural resources when evaluating whether to approve a permit application.
 - That approval of a permit provides the permitholder with the assurance that during the duration of the permit the engineering and environmental concepts are likely to meet applicable rule criteria needed for the issuance of permits provided: there have been no changes to rules governing the permits; the permit is not inconsistent with any total maximum daily load or basin management action plan adopted for the water body into which the system discharges; and activities and impacts are consistent with factors described in the original permit. Should it be determined that a proposed activity is inconsistent with the original permit the applicant can ask to modify the original permit or seek the issuance of a new permit.
 - That the permit may authorize advance mitigation for impacts expected to result from future activities.
 - That final agency action concerning authorizations to use sovereignty submerged land may not be delegated by the Board of Trustees of the Internal Improvement Trust Fund. However, upon this approval, the applicant is not required to return to the Board as the activities are implemented unless specifically requested by at least one member of the Board. Any delegations made by the Board to the DEP concerning a private parties use of sovereignty submerged lands does not exempt the private party from applicable rules.
 - That the following procedures shall apply to the approval or denial of a permit:
 - Processing shall be subject to the procedures of s. 373.427, F.S., (concurrent permit review) and s. 120.60, F.S., (administrative procedures).
 - Applicants may request an informal hearing, pursuant to s. 120.57(2), F.S., if they feel requests for additional information are not authorized by law.
 - Upon the DEP's notice of intent to issue a permit the applicant is required to publish a one-time notice in a local newspaper of such intent.
 - Final agency action is subject to ss. 120.569 and 120.57, F.S., (administrative procedures) except when such action is only approving a subsequent construction project authorized under the original permit.
 - That anyone wishing to challenge the issuance of a permit shall have 21 days from the date of publication of the notice of intent to initiate such a challenge.
 - If an administrative hearing is requested it shall be subject to the summary hearing provisions of s. 120.574, F.S.
 - If an administrative law judge issues a recommended order instead of a final order than the summary proceeding shall occur within 90 days after a party files a motion for a summary hearing.
 - The DEP and Board of Trustees of the Internal Improvement Trust Fund with authority to issue necessary authorizations in advance of the actual issuance of a wildlife take authorization under the federal Endangered Species Act. However, this authorization must include a condition that such takes cannot occur until formal authorization is granted. Authority is also provided for the DEP to unilaterally modify these permits or

- authorization to make them consistent with any subsequently issued incidental take permit. Such modification shall not be subject to administrative proceedings under ss. 120.569, and 120.57, F.S.
- Specific authority to the DEP to adopt rules and provisions for the implementation of this new permit. The provision also states that while such rules are being developed the program may be implemented.

Section 6 amends s. 403.061, F.S., to remove references to DEP entering into memoranda of agreements with the Florida Ports Council, a trade organization representing Florida's seaports, to provide a supplemental permitting process for the 5-year or conceptual 15-year joint coastal permits and environmental resource permits necessary for certain port projects.

Section 7 amends s. 403.813, F.S., to add wetland communities to existing provisions that restrict the size and impacts of mixing zones associated with dredging activities and return water discharges. A provision of the bill also extends from 2 to 3 the number of years in which maintenance dredging will be presumed to be in compliance when done as a result of a storm event that causes impacts to the original approved design areas.

Section 8 provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate, but likely positive.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce Committee – March 10, 2010:

The CS differs from the bill as filed in the following ways:

- Removed the two sections of the original bill that expressed legislative intent about the economic significance of seaports and gave them preference for all available economic incentives, and which amended the Economic Development Road Fund, in s. 288.063, F.S., to make seaport projects approved by the FSTED Council eligible for the fund.
- Removed language in the original bill that briefly described the process and information DEP would use to evaluate a proposed port master plan authorization and either approve or deny it.
- Added detailed provisions on:
 - What information must be included in the port project applicant's request to DEP;
 - The balancing criteria DEP must use when evaluating the application;
 - The expedited administrative review process and time-frames for decisions by DEP and the administrative law judge; and
 - Access to the administrative hearing process for persons or entities substantially affected by the proposed port project.
- Corrected scrivener's errors.

CS/CS by Environmental Preservation and Conservation Committee – March 23, 2010:

The CS/CS differs from the CS in the following ways:

- Revises the port conceptual permit program to clarify the information needed by the DEP when evaluating and making a decision regarding the application for the permit. Additional changes provide clarification to the process used for obtaining the permit and authorizations granted by the permit.
- The CS originally created an expedited permitting process in 311.106, F.S., the CS/CS strikes this and creates a conceptual permit and related processes to be used in s. 373.4133, F.S.
- Revises the definition of stormwater management system to clarify that certain port structures are exempt provided they meet certain conditions.

- Revises the work program amendment process for seaport projects funded under the DOT 5-year work program.
- Adds wetlands communities as an issue needing consideration when establishing mixing zones related to dredging and return water discharges.

B. Amendments:

None.